

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ALONZO BELEN,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

)  
) Case No. RED-96-0016  
)  
)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD  
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**I. INTRODUCTION**

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this matter came on for hearing before the Personnel Appeals Board, JUDITH MERCHANT, Chair. The hearing was held in the Personnel Appeals Board hearing room in Olympia, Washington, on June 2, 1998. ROGER F. SANFORD, Member, reviewed the record, including the file, exhibits, and the entire taped proceedings, and participated in the decision in this matter. HOWARD N. JORGENSEN, Vice Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Alonzo Belen was present and was represented by Michael Hanbey, Attorney at Law of Ditlevson, Rodgers and Hanbey, P.S. Respondent Department of Corrections was represented by Elizabeth Delay Brown, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a six-month reduction in salary. Respondent alleged that Appellant failed to conduct himself in a professional manner; used profanity and derogatory language toward an inmate; exceeded his authority; failed to notify his supervisor or other officers of a potential inmate problem; placed himself in a vulnerable

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1 situation when he returned to the tier; and used an unauthorized method of physical force in a “take  
2 down” of an inmate.

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4 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep’t of Corrections, PAB No. D82-084  
5 (1983); McCurdy v. Dep’t of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.  
6 School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep’t of Social & Health Services,  
7 PAB No. D93-053 (1994); Holladay v. Dep’t of Veteran’s Affairs, PAB No. D91-084 (1992).

## 8 9 **II. FINDINGS OF FACT**

10 2.1 Appellant Alonzo Belen is a Correctional Officer and a permanent employee of Respondent  
11 Department of Corrections (DOC) at the Washington Corrections Center (WCC). Appellant and  
12 Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder,  
13 Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on  
14 May 2, 1996.

15  
16 2.2 By letter dated April 8, 1996, Appellant was given a six-month reduction in salary for  
17 neglect of duty, gross misconduct and willful violation of published employing agency or  
18 department of personnel rules or regulations. In summary, the letter alleges that Appellant used  
19 profanity and derogatory language to an inmate; exceeded his authority regarding placing an inmate  
20 in the Intensive Management Unit (IMU); failed to notify his supervisor or other officers in the unit  
21 of a potential inmate problem; used poor judgment by returning to and walking down E and F tiers  
22 after two previous confrontations with Inmate Maestas; unnecessarily used a physical force  
23 techniques not taught at WCC; and failed to conduct himself in a professional manner. (Exh. R-1).

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1 2.3 Appellant has been employed by Respondent as a Correctional Officer at the WCC since  
2 May 5, 1992. On November 20, 1995, he was working on unit R-5 from 6 a.m. to 2 p.m. R-5 is a  
3 close custody unit in which inmates have fewer privileges, less freedom and more surveillance than  
4 other units. Inmates are placed in this unit while they are being classified for risk and security and  
5 while a determination about the inmates' institution placement is being made.

6  
7 2.4 On November 20, 1995, at approximately 8:10 a.m., in-house moves of inmates in tiers E  
8 and F were in progress. Appellant and Officer Knight were "working the floor" and Officer  
9 Leighty was working in the booth. In addition, a TIDES Intern trainee, Cynthia Hughes, was  
10 "shadowing" Appellant during this time.

11  
12 2.5 Generally, inmates resist moves. During the move, Appellant had an encounter with inmate  
13 Maestas at cell E-5. The inmate became upset with Appellant and pushed him. Appellant told the  
14 inmate not to push him again and told the him that he (the inmate) was going to the Intensive  
15 Management Unit (IMU). Cynthia Hughes did not see the inmate push Appellant but she heard  
16 Appellant tell the inmate, "Don't be brushing up against me." (Testimony of Cynthia Hughes and  
17 Exh. R-1, Att. 1).

18  
19 2.6 Appellant and Ms. Hughes continued to check the cells. As Ms. Hughes proceeded down  
20 the hallway, Appellant entered cell F-15. Ms. Hughes could not see in the cell, but she heard  
21 Appellant and the inmate exchange profanities and she heard Appellant tell the inmate, "Don't  
22 threaten me. You're just a fucking little punk." (Testimony of Cynthia Hughes and Exh. R-1, Att.  
23 1).

1 2.7 Appellant and Ms. Hughes proceeded down the tier toward the dayroom. Appellant told  
2 Ms. Hughes to go to the control booth. Appellant claims that he instructed Ms. Hughes to return to  
3 the booth because she was discussing her address and telephone number with inmates. Ms. Hughes  
4 claims that Appellant told her to return to the booth because he did not want her on the tier “in case  
5 he had to take someone down.” We find Ms. Hughes’ testimony and written statement on the  
6 reason for her return to the booth to be credible. This was Ms. Hughes’ first day at WCC, she was  
7 not an employee of WCC, she was not familiar with WCC procedures, and she had no reason to  
8 fabricate her statement.

9  
10 2.8 The hallway between the E and F tiers is monitored by a video camera. It is not monitored  
11 for sound. As Ms. Hughes returned to the booth, Appellant returned to the tier. On the video  
12 monitor in the booth, Ms. Hughes saw Appellant “take down” inmate Maestas. She alerted Officer  
13 Leighty, and he called for assistance. Officer Knight responded and assisted Appellant in putting  
14 inmate Maestas in wrist restraints.

15  
16 2.9 Appellant testified that as he and inmate Maestas were proceeding down the hallway in  
17 opposite directions, the inmate bumped Appellant as they passed each other. There were three  
18 additional inmates in the hallway. Appellant testified that inmate Maestas approached him in an  
19 aggressive manner, yelling and swearing at him, and threatening to kill him. Appellant further  
20 testified that after they passed each other, Appellant heard a loud noise and he thought that inmate  
21 Maestas was going to attack him. Appellant turned, grabbed the inmate’s jacket by the inmate’s  
22 shoulder and took the inmate to the ground. Appellant held the inmate on the ground until Officer  
23 Knight arrived to assist him. (Testimony of Appellant).

1 2.10 In his written statement, Appellant did not report that the inmate was aggressive, that he  
2 verbally threatened Appellant, or that Appellant heard a loud noise. Appellant testified that he  
3 wrote his statement immediately following the incident and that he was still upset and overlooked  
4 including these details. (Testimony of Appellant).

5  
6 2.11 The Board does not find Appellant's testimony credible. We have carefully reviewed the  
7 video tape of the incident. The video tape does not corroborate Appellant's assertions regarding the  
8 inmate's demeanor or behavior. Rather, the video tape shows and the Board finds that Appellant  
9 and the inmate slightly brushed each other as they passed in the hallway. As the inmate continued  
10 walking down the hallway, Appellant turned, took two steps back towards the inmate, grabbed the  
11 inmate, and took him down out of view of the camera.

12  
13 2.12 Custody Unit Supervisor (CUS) Alfred David (A.D.) Fitzgerald was a Lieutenant at the time  
14 of this incident. CUS Fitzgerald investigated the Employee Conduct Report (ECR) and wrote the  
15 ECR Supervisor's Report. He interviewed staff and reviewed the video tape of the incident. He did  
16 not interview the three inmates who were in the hallway at the time of the incident, however, he did  
17 review their written statements. CUS Fitzgerald concluded, in part, that Appellant behaved in an  
18 unprofessional manner, exceeded his authority, failed to report a potential problem, used poor  
19 judgment, and unnecessarily used "force" against an inmate. (Exh. R-1, Att. 1).

20  
21 2.13 Although Appellant had two previous encounters with inmate Maestas that morning, he did  
22 not report the encounters to his supervisor or any other officer. (Testimony of Appellant).

23  
24 2.14 At the time of this incident, Phil Stanley was the Superintendent of WCC and was  
25 Appellant's appointing authority. Mr. Stanley reviewed the video tape, reviewed the information in  
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1 the ECR, including the supervisor's report, and conducted an administrative hearing. During the  
2 administrative hearing Appellant was given an opportunity to respond to the charges. Appellant  
3 requested additional time to present additional information and his request was granted. Appellant  
4 did not provide information to Mr. Stanley about hearing a loud noise before turning and subduing  
5 the inmate. Mr. Stanley concluded that Appellant did not use an approved technique for controlling  
6 the inmate, did not follow proper procedures for de-escalating a potentially dangerous situation, and  
7 inappropriately used profanity in responding to the inmate. Mr. Stanley seriously considered  
8 dismissing Appellant, however, after taking into account the inmate's threats and use of profanity  
9 directed at Appellant, Appellant's fear of an assault by the inmate, and their physical contact in the  
10 hallway, he determined that a reduction in salary was appropriate.

11  
12 2.15 Respondent has published policies that require professional interactions between employees  
13 and offender (Exh. R-1, Att. 4) and that address authorized use of force and use of force techniques  
14 (Exh. R-1, Att. 6). The department Employee Handbook requires employees to perform their duties  
15 safely and prohibits the use of profanity or inflammatory remarks (Exh. R-1, Att. 3). Appellant was  
16 aware of the policies and handbook (Exh. R-1, Atts. 2 and 5).

### 17 18 **III. ARGUMENTS OF THE PARTIES**

19 3.1 Respondent argues that Appellant has a responsibility to use good judgment, to make good  
20 decisions, to follow WCC policies and procedures, and to not put himself and others at risk.  
21 Respondent contends that Appellant failed to fulfill the duties and responsibilities of his position  
22 when he did not alert others of a potentially dangerous situation with inmate Maestas, when he  
23 engaged in use of profanity with the inmate, when he returned to the tier after he felt that the inmate  
24 had threatened him, and when he inappropriately used force to control the inmate. Respondent  
25 asserts that Appellant received proper training in procedures and techniques and that he failed to  
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1 fully assess the situation and inappropriately reacted to a non-emergent situation. Respondent  
2 argues that a six-month reduction in salary is appropriate.

3  
4 3.2 Appellant argues that Ms. Hughes was new to WCC and did not know or understand what  
5 was happening on the tier and that his perception of the situation is more credible. Appellant  
6 contends that as he was walking down the hallway, he was trying to ignore inmate Maestas and that  
7 he would have continued on down the hallway if he had not heard the loud noise. Appellant asserts  
8 that he felt threatened, that he had a duty to protect himself and others, and that use of force is  
9 authorized in emergent situations such as physical threats. Appellant argues that he was working  
10 with over 300 inmates, and therefore, he did not have time to play games and hold up the whole unit  
11 just because inmate Maestas was upset. Appellant contends that he subdued inmate Maestas by  
12 using a technique taught at WCC. Appellant further contends that following the incident, CUS  
13 Fitzgerald told him that he was going to have Appellant fired. Appellant also contends that during  
14 the administrative hearing process, he provided Mr. Stanley with inmates' statements in support of  
15 Appellant and that Mr. Stanley threw the statements away. Appellant asserts that his actions were  
16 appropriate and were not in violation of WCC procedures. Therefore, he contends that his appeal  
17 should be granted.

#### 18 19 **IV. CONCLUSIONS OF LAW**

20 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
21 herein.

22  
23 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
24 the charges upon which the action was initiated by proving by a preponderance of the credible  
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
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1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
2 Corrections, PAB No. D82-084 (1983).

3  
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
6 of Social & Health Services, PAB No. D86-119 (1987).

7  
8 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
9 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

10  
11 4.5 Willful violation of published employing agency or institution or Personnel Resources  
12 Board rules or regulations is established by facts showing the existence and publication of the rules  
13 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
14 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &  
15 Health Services, PAB No. D93-053 (1994).

16  
17 4.6 Respondent has met its burden of proof that Appellant neglected his duty by directing  
18 profanity at an inmate in the presence of the TIDES intern and other inmates, by exceeding his  
19 authority in deciding to place the inmate in the IMU, and by failing to notify others of a potentially  
20 dangerous situation, thereby placing himself and others at risk. At the time of the take down, the  
21 inmate presented no physical threat to Appellant and no emergency situation existed. Therefore,  
22 Respondent has proven that Appellant neglected his duty by failing to assess the situation before he  
23 inappropriately reacted to a non-emergent situation. Respondent has also proven that Appellant  
24 neglected his duty by failing to follow WCC policies and procedures.



1 4.7 Respondent has met its burden of proof that Appellant's actions constitute gross misconduct.  
2 Appellant's inappropriate behavior, poor decisions and inappropriate use of physical force had the  
3 potential to adversely affect WCC's ability to carry out its functions. In light of the location and  
4 proximity of other inmates to the area in which Appellant's confrontation with inmate Maestas  
5 occurred, Respondent has proven that Appellant's actions were flagrant and constituted gross  
6 misconduct.

7  
8 4.8 Respondent has met its burden of proof that Appellant willfully violated WCC Field  
9 Instructions, Department Expectations and agency policies that prohibit the use of profanity, that  
10 require professional relations with offenders, and that prohibit the use of force in non-emergent  
11 situations.

12  
13 4.9 Respondent has failed to meet its burden of proof that Appellant used a physical force  
14 technique not taught at WCC. Appellant testified that he was taught the technique at WCC.  
15 Respondent provided no credible evidence to refute this assertion.

16  
17 4.10 Appellant alleges inappropriate actions by Respondent during the investigation and  
18 administrative hearing process. We find no evidence to support these allegations.

19  
20 4.11 In determining whether a sanction imposed is appropriate, consideration must be given to  
21 the facts and circumstances including the seriousness and circumstances of the offense. The penalty  
22 should not be disturbed unless it is too severe. The sanction imposed should be sufficient to prevent  
23 recurrence, to deter others from similar misconduct, and to maintain the integrity of the program.  
24 An action does not necessarily fail if one charge is not sustained unless the entire action depends on  
25 the unproven charge. Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

1  
2 4.12 Appellant acted in an unprofessional manner, exceeded his authority, failed to abide by  
3 department policies and procedures in a potentially volatile situation, endangered himself, other  
4 staff and inmates, and inappropriately over reacted to a non-emergent situation. Discipline is  
5 warranted for actions of such an egregious nature. Therefore, we find that a six-month reduction in  
6 salary is appropriate and appeal should be denied.

7  
8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Alonzo Belen is denied.

10  
11 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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13 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Judith Merchant, Chair

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Roger F. Sanford, Member

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2828 Capitol Boulevard  
Olympia, Washington 98504  
(360) 586-1481